

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Rainey Hope Crosby, #215620,	)	
	)	C/A No. 0:08-1776-HMH-PJG
Plaintiff,	)	
	)	
v.	)	
	)	<b>REPORT AND RECOMMENDATION</b>
Ervin Mays, Esquire (Solicitor)	)	
and Saluda County,	)	
	)	
Defendants.	)	
_____	)	

The plaintiff, Rainey Hope Crosby, proceeding *pro se*, brought this action seeking relief pursuant to 42 U.S.C. § 1983. On October 24, 2008, the defendants filed a motion to dismiss for lack of prosecution. By order of this court filed October 27, 2008, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the plaintiff was advised of the dismissal and summary judgment procedures and the possible consequences if he failed to respond adequately. See Order, Docket Entry 36. This order, which was mailed to the plaintiff, was returned to the Clerk of Court on November 3, 2008, as undeliverable by the United States Postal Service. The envelope is marked “Return to Sender” and states that the plaintiff was released. See Envelope, Docket Entry 39, Attachment 1.

The court notes that when the plaintiff filed this action, he was specifically instructed as follows:

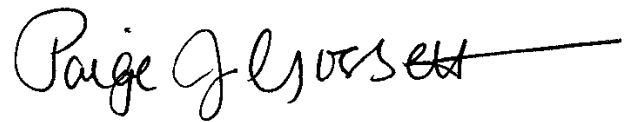
You are ordered to always keep the Clerk of Court advised **in writing** . . . if your address changes for any reason, so as to assure that orders or other matters that specify deadlines for you to meet will be received by you. If as a result of your failure to comply with this Order, you fail to meet a deadline set by this Court, **your case may be dismissed for violating this Order**. Therefore, if you have a change of address before this case is ended, you must comply with this Order by immediately advising the Clerk of Court in writing of

such change of address . . . . **Your failure to do so will not be excused by the Court.**  
(emphasis added).

See Order, Docket Entry 6. The plaintiff has failed to comply with this order, and as a result neither the court nor the defendants have any means of contacting him concerning his case.

Based on the foregoing, and the previous instructions and specific warning given to the plaintiff in the court's prior order, the court recommends that this action be **dismissed with prejudice** in accordance with Rule 41(b) of the Federal Rules of Civil Procedure. The Clerk is directed to send this Report and Recommendation to the plaintiff at his last known address.

**If the plaintiff notifies the court within the time set forth for filing objections to this Report and Recommendation that he wishes to continue with this case and provides a current address, the Clerk is directed to return this file to the undersigned for further handling. If, however, no objections are filed, the Clerk shall forward this Report and Recommendation to the District Judge for disposition.**

A handwritten signature in black ink, reading "Paige J. Gossett", followed by a horizontal line.

Paige J. Gossett  
UNITED STATES MAGISTRATE JUDGE

December 8, 2008  
Columbia, South Carolina

*The parties are referred to the Notice Page attached hereto.*

### **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005).

Specific written objections must be filed within ten (10) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk  
United States District Court  
901 Richland Street  
Columbia, South Carolina 29201

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985).